

## KANSAS DEPARTMENT FOR AGING AND DISABILITY SERVICES COVID-19 GUIDANCE

**DATE:** March 15, 2021 (*updated November 22, 2021*)

**TO:** State & Local Officials, Adult Care Home Operators/Owners/Administrators, Stakeholders, Industry Associations, General Public

**FROM:** Secretary Laura Howard

**SUBJECT:** Visitation Guidance for Long Term Care Settings (*REVISED*)

**EFFECTIVE:** Immediately

The Centers for Medicare and Medicaid Services (CMS) updated its September 17, 2020 guidance ([QSO-20-39-NH](#)) regarding visitation in nursing homes. KDADS recognizes other long-term care settings in Kansas are not subject to the guidance issued by CMS for certified nursing facilities. Using the guidance of CMS, Center for Disease Control and Prevention (CDC) and Kansas Department of Health and Environment (KDHE); KDADS updated its visitation guidelines for all long-term care settings in Kansas including Assisted Living, Board Care Home, Home Plus, Nursing Facility and Residential Health Care Facilities.

KDADS recognizes the prolonged separation of long-term care residents from their loved ones has taken a significant toll on the health of everyone involved; as well as the need to continue to protect this vulnerable population. Visitation is a right for residents in adult care homes and facilities should make best efforts to facilitate visitation for residents and their loved ones or preferred visitors.

Acknowledging that many residents and staff of adult care homes have been vaccinated, the updated guidance on visitation promotes connecting residents and their loved ones. The guidance also continues to emphasize the importance of strong infection control practices, testing for the presence of the COVID-19 virus, and effective responses to outbreaks of COVID-19 in adult care homes. The vaccine provides an additional level of protection from COVID-19 infection but must be balanced with maintaining and practicing the core principles of infection control that have been in place throughout the pandemic.

Regardless of how visits are conducted, there are certain [core principles and best practices](#) that reduce the risk of COVID-19 transmission:

## Core Principles of COVID-19 Infection Prevention

- Screening of all who enter the facility for signs and symptoms of COVID-19 (e.g., temperature checks, questions about and observations of signs or symptoms), and denial of entry of those with signs or symptoms or those who have had close contact with someone with COVID-19 infection in the prior 14 days regardless of the visitors vaccination status.
- Appropriate [hand hygiene](#) (use of alcohol-based hand rub is preferred).
- Face covering or mask (covering mouth and nose) in accordance with [CDC guidance](#).
- Social distancing of at least six feet between persons.
- The facility must have Instructional signage throughout the facility and proper visitor education on COVID-19 signs and symptoms, infection control precautions, other applicable facility practices (e.g., use of face coverings or masks, specified entries, exits and routes to designated areas, hand hygiene).
- Cleaning and disinfecting high frequency touched surfaces in the facility often, and designated visitation areas after each visit.
- Appropriate staff use of Personal Protective Equipment (PPE).
- Effective cohorting of residents when COVID-19 infections are identified (e.g., separate areas dedicated to COVID-19 care).
- *Visitors who have a positive viral test for COVID-19, symptoms of COVID-19, or currently meet the criteria for quarantine, should not enter the facility. Facilities should screen all who enter for these visitation exclusions.*

These core principles are consistent with the CDC guidance for [nursing homes](#) and [assisted living](#) and should be adhered to at all times.

Visitation should be person-centered, consider the residents' physical, mental, and psychosocial well-being, and support their quality of life. Facilities should enable visits to be conducted with an adequate degree of privacy. Visitors who are unable to adhere to the core principles of COVID-19 infection prevention should not be permitted to visit or should be asked to leave. By following a person-centered approach and adhering to these core principles, visitation can occur safely based on the guidance below.

To ensure resident rights are not violated and that visitation plans are person-centered and able to be executed by the resident, facility and visitor, KDADS has created the [Resident Visitation Preferences Template](#) to identify the types of questions and issues that should be discussed to facilitate visitation. All long-term care facilities should utilize the template found at the end of this guidance or a form of their own that captures the same information showing that a discussion has been held between a staff member and resident, resident's representative or resident's family. The conversations should be made in conjunction with the facility and resident or resident's representative. The conversation should be informed by the facilities capacity to conduct different visitation options. This information should be completed for each resident (as of 01/31/2021) and updated regularly.

It is important facility owners or operators communicate their current status for visitation based on risk factors present within the facility and surrounding community to residents and their friends and family

members who would be affected by visitation restrictions. Families and residents should have a clear understanding of the facility's ability to allow visitation and the conditions when visitation can occur.

## **Compassionate Care Visits**

*Compassionate care visits are allowed at all times. Previously during the PHE, there were some scenarios where residents should only have compassionate care visits. However, visitation is now allowed at all times for all residents, in accordance with state and federal regulations. Therefore, we believe there are few scenarios when visitation should be limited only to compassionate care visits. In the event a scenario arises that would limit visitation for a resident (e.g., a resident is severely immunocompromised and the number of visitors the resident is exposed to needs to be kept to a minimum), compassionate care visits would still be allowed at all times. KDADS and CMS expect these scenarios to be rare events.*

Visitors should physically distance from other residents and staff in the facility. Through a person-centered approach, facilities should work with residents, families, caregivers, resident representatives, and the Ombudsman program to identify the need for compassionate care visits. The need for compassionate care visits should be clearly documented in the residents' plan of care or service agreement.

## **Essential Care Giver**

Family members and other close, outside caregivers have a critical role in the care and support of residents, including advocating for their health and well-being. It is strongly recommended Adult Care Homes (ACH) develop a process to designate essential caregivers (EC).

An Essential Caregiver is an individual, including clergy members, who has been given consent by the resident, or their guardian or legal representative, to provide health care services or assistance with activities of daily living to help maintain or improve the quality of care or quality of life of a facility resident as well as positively influencing the behavior of the resident. Care or services provided by the Essential Caregiver must be included in the plan of care or service plan for the resident and may include assistance with bathing, dressing, eating, and/or emotional support.

ACH's are not required to implement an EC program, but this guidance provides recommendations for facilities that choose to. The goal of designating ECs is to help ensure high-risk residents continue to receive individualized, person-centered care. KDADS will consider essential caregiver visits as a type of compassionate care visit. While not required, KDADS encourages facilities in counties with medium or high levels of community transmission to test visitors, if possible. If so, facilities should prioritize visitors that visit regularly (e.g., weekly). Facilities also may encourage visitors to be tested on their own. The guidance below provides guidelines and suggestions for the implementation of an EC program in an ACH.

- Facilities must establish policies and procedures for designating a resident's essential care giver and how EC's can be included in a resident's activities.
- Residents, guardians or legal representatives should consult the facility's Administrator, Director of Nursing, Social Services Director, or other designated facility staff to help determine who meets the criteria of an EC.
- Residents may want to designate more than one EC, based on their past involvement and needs (e.g., more than one family member previously split time to provide care for the resident). In these unique situations, facility staff should work cooperatively with the resident and family to create a schedule to accommodate the ECs.

- Only one (1) Essential Caregiver should be present at any given time.
- EC's should complete facility-designated infection prevention and control training, including proper PPE and mask use, hand hygiene, and social distancing.
- Facilities should have EC's sign a consent form acknowledging completion of the facility-designated infection prevention and control training, an understanding of the facility's visitation and infection prevention and control policies, and the risk created by frequency and duration of close contact.
- Consider having EC's complete the temporary nurse aid training program provided by AHCA/NCAL.
- Consider hanging posters throughout the facility that demonstrate key instructions to reinforce safe practices for infection control and proper PPE usage.
- EC's should be screened upon arrival and only be allowed entry if the screening criteria are met. A screening criteria should determine whether the EC has ever been diagnosed with COVID-19 and if so, the EC should be currently asymptomatic and at least ten (10) days must have passed since disease onset. EC's with signs and symptoms consistent with COVID-19 should not be allowed entry to a facility to perform essential caregiver functions. An EC who is unable to demonstrate proper use of infection control techniques should not be allowed to perform essential caregiver functions. Facility use of testing as part of the screening process must be based on current CMS, CDC, and FDA guidance and may be provided at the facility's expense.
- The EC must wear all necessary personal protective equipment (PPE) while in the building and must wash or sanitize their hands regularly.
- The facility should ensure hand sanitizing stations and alcohol-based hand rubs are accessible.
- EC's should inform the facility if they develop a fever or symptoms consistent with COVID-19 within fourteen (14) days of a visit to the resident.
- The facility should maintain EC logs noting the names of EC's, who they visited, staff that assisted the during the visit, dates of visit, and contact information in the event of a subsequent COVID-19 outbreak among staff or residents.
- The facility should work with the EC to establish a mutually agreeable schedule that addresses the facility obligations, including the numbers of EC's in the building at the same time, and is person-centered. This includes working with an EC by including scheduling during evening and weekends, to accommodate work or childcare barriers.
- After attempts to mitigate concerns, the facility should restrict or revoke visitation if the EC fails to follow infection prevention and control requirements or other COVID-19-related rules of the facility.
- A facility may stop Essential Caregiver visits if the facility has a resident test positive for COVID-19, or has a staff person that tests positive for COVID-19 if the staff person was in the facility in the ten (10) days prior to the positive test, until it has been fourteen (14) days since the last facility acquired COVID-19 positive case. Facility acquired cases include staff who test positive (if staff person was in the facility in the ten (10) days prior to the positive test) and residents who test positive while residing

in the facility. Facility acquired does not include residents admitted to the facility with a known positive diagnosis or residents who test positive within fourteen (14) days of admission, as long as these residents have resided in a designated COVID-19 unit or have been quarantined since admission.

- Essential Caregivers should maintain a social distance of at least six (6) feet with staff and other residents and limit movement in the facility.
- The facility must allow evening and weekend visits that accommodate the EC, who may be limited by work or childcare barriers.
- Facilities should direct the EC to provide care in the resident's room, or in facility-designated areas to limit movement in the facility.
- The EC may take the resident outside for a walk during their time with the resident. Pushing the resident in a wheelchair is acceptable as long as the EC is wearing appropriate PPE and the resident is wearing a facemask, as tolerated.
- While an EC visit is considered compassionate care, KDADS recommends that the EC not provide high-contact care activities during a resident's quarantine or isolation period.
- Facilities should not restrict visitation without a reasonable clinical or safety cause. Prior to any restriction, the facility, EC, and resident should discuss any concerns.

## **Window Visitation**

Window Visitation is a great way to allow for loved ones to see each other while maintaining the up most vigilance for the spread of infection. Window visits should occur without consideration of community transmission level\*\* or vaccination status. There are several factors that facilities and residents should consider when implementing window visitation.

- *Decide whether a window visit is the right fit for the resident*
  - Residents with dementia may not understand the rules of the visit or may forget. This type of visit may confuse or frustrate them.
  - Residents living on floors above ground level will need to use an alternate window. Facilities should determine where that will be possible.
- *Communication is Key*
  - Residents may get scared if people walk up to their window. Be sure the visitation plan is well communicated with residents, resident roommates and staff on duty.
  - Make a staffing plan that allows for staff availability for assistance so they can have residents dressed, ready, and at the window at the time of your visit.
  - Make a phone, walkie talkie, voice amplifier or other electronic communication device

available if one is needed for the resident or their visitor to ensure clear communication can be achieved.

- Ensure the visitor is well informed of when and where to go for their visit and any expectations they need to adhere to.
  
- *Implement safety measures*
  - If a resident's window will be open during the visit, the resident should stay 3 feet back from the window and should wear a cloth mask. The family member visiting the resident should sit 3 feet back from the window outside the building and wear a cloth face mask. If this cannot be met due to the facility's physical environment a total of 6 feet should be maintained between the resident and visitor but can be achieved through shifting the distance from either the resident to the window or visitor to the window footage to maintain a total of 6 feet. If the resident is fully vaccinated\*, they can choose to have close contact (including touch) with their visitor while wearing a well-fitting face mask and performing hand-hygiene before and after. Regardless, visitors should physically distance from other residents and staff in the facility.
  - Staff can be creative about how they mark out the place families can sit outside the window.
  - All window visits should comply with social distancing requirements. Visitors must keep at least 6 feet away from people visiting other residents.

## **Outdoor Visitation**

Outdoor visits pose a lower risk of transmission due to increased space and airflow and can be implemented without the consideration of the community transmission level\*\*. Outdoor visitation should occur routinely for all residents that express an interest in having visitors even when the resident and visitor are not fully vaccinated\* against COVID-19. Outside visits may be limited by weather considerations (e.g., inclement weather, excessively hot or cold temperatures, poor air quality), an individual resident's health status (e.g., medical condition(s), COVID-19 status, quarantine status), or a facility's outbreak status. Facilities should create accessible and safe outdoor spaces for visitation, such as in courtyards, patios, or parking lots, including the use of tents, if available. When conducting outdoor visitation, facilities should consider the following criteria:

- Adequate staff available to allow for help with outdoor transition of residents, and to assist with wiping down any visitation areas as necessary.
- Staff should be able to maintain visual observation but provide as much distance as necessary to allow for privacy of the visit conversation.
- Must have a system to ensure visitors are screened for signs and symptoms of COVID-19 at a screening location designated outside the building.
- Must have a system to ensure residents and visitors wear a mask or other face covering at all times, as tolerated. The facility should provide PPE as needed and provide signage or verbal reminders of appropriate use.

- Outdoor visitation spaces must be designed to be accessible without visitors having to walk through the facility.
- Outdoor visitation spaces must support social distancing of at least 6 feet between the visitor and resident. If the resident is fully vaccinated\*, they can choose to have close contact (including touch) with their visitor while wearing a well-fitting face mask and performing hand-hygiene before and after. Regardless, visitors should physically distance from other residents, visitors and staff in the facility.
- Provide alcohol-based hand sanitizer to persons visiting residents and provide signage or verbal reminders of correct use.
- Maintain a detailed visitor log with the date and time of visitation, resident and staff encountered during visitation as well as contact information for the visitor.
- Visitors under age 12 years must be in the control of adults who bring them and must also comply with social distancing requirements.
- Pets must be under the control of the visitor bringing them in.
- Visitors must stay in designated visitation locations.
- Facilities may establish additional guidelines as needed to ensure the safety of visitations and their facility operations.

## **Indoor Visitation**

See the current [CDC guidance at Updated Healthcare Infection Prevention and Control Recommendations in Response to COVID-19 Vaccination](#) for information on indoor visitation.

Facilities should allow indoor visitation at all times and for all residents (regardless of vaccination status), except for a few circumstances when visitation should be limited due to a high risk of COVID-19 transmission (note: compassionate care visits should be permitted at all times).

Indoor visitation should be accommodated and supported based on the following guidelines

- Visitors should be able to adhere to the core principles and staff should provide monitoring for those who may have difficulty adhering to core principles, such as children;
- Facilities should limit movement in the facility. For example, visitors should not walk around different halls of the facility. Rather, they should go directly to the resident's room or designated visitation area.
- If the patient/resident is in a single-person room, visitation could occur in their room.
- Visits for patients/residents who share a room should ideally not be conducted in the patient/resident's room.
  - If in-room visitation must occur (e.g., patient/resident is unable to leave the room), an unvaccinated roommate should not be present during the visit. If neither patient/resident is able to leave the room, facilities should attempt to enable in-room visitation while maintaining

[recommended infection prevention and control practices](#), including physical distancing and source control.

- Indoor visitation spaces must support social distancing of at least 6 feet between the visitor and resident. If the resident is fully vaccinated\*, they can choose to have close contact (including touch) with their visitor while wearing a well-fitting face mask and performing hand-hygiene before and after. Regardless, visitors should physically distance from other residents, visitors and staff in the facility.
- Visitation locations will be equipped with sanitation supplies, readily available to visitors and residents.
- Facilities may establish additional guidelines as needed to ensure the safety of visitations and their facility operations.
- *If the adult care home's county COVID-19 community level of transmission is at a substantial or high level, all residents and visitors, regardless of vaccination status, should wear face coverings or masks and physically distance, at all times. In areas of low to moderate transmission, the safest practice is for residents and visitors to wear face coverings or masks and physically distance, particularly if either of them is at increased risk for [severe disease](#) or are unvaccinated.*
- *If the resident and all their visitor(s) are fully vaccinated and the resident is not moderately or severely immunocompromised, they may choose not to wear face coverings or masks and to have physical contact. Visitors should wear face coverings or masks when around other residents or healthcare personnel, regardless of vaccination status. Additional information on levels of community transmission is available on the CDC's [COVID-19 Integrated County View](#) webpage.*
- *While not recommended, residents who are on transmission-based precautions (TBP) or quarantine can still receive visitors. In these cases, visits should occur in the resident's room and the resident should wear a well-fitting facemask (if tolerated). Before visiting residents, who are on TBP or quarantine, visitors should be made aware of the potential risk of visiting and precautions necessary in order to visit the resident. Visitors should adhere to the core principles of infection prevention. Facilities may offer well-fitting facemasks or other appropriate PPE, if available; however, facilities are not required to provide PPE for visitors.*

CMS and CDC continue to recommend facilities, residents, and families adhere to the core principles of COVID-19 infection, including physical distancing (maintaining at least 6 feet between people). This continues to be the safest way to prevent the spread of COVID-19, particularly if either party has not been fully vaccinated. However, we acknowledge the toll that separation and isolation has taken. We also acknowledge that there is no substitute for physical contact, such as the warm embrace between a resident and their loved one. Therefore, if the resident is fully vaccinated\*, they can choose to have close contact (including touch) with their visitor [“Interim Infection Prevention and Control Recommendations for Healthcare Personnel During the Coronavirus Disease 2019 \(COVID-19\) Pandemic.”](#) *Unvaccinated residents may also choose to have physical touch based on their preferences and needs, such as with support persons for individuals with disabilities and visitors participating in certain religious practices, including in end-of-life situations. In these situations, unvaccinated residents (or their representative) and their visitors should be advised of the risks of physical contact prior to the visit. Regardless, visitors should physically distance from other residents and staff in the facility.*

### **Indoor Visitation during an Outbreak *Investigation***

An outbreak ~~exists~~ *investigation is initiated* when a [new nursing home onset](#) of COVID-19 occurs (i.e., a new COVID-19 case among residents or staff). This guidance is intended to describe how visitation

can still occur when there is an outbreak, but there is evidence that the transmission of COVID-19 is contained to a single area (e.g., unit) of the facility. To swiftly detect cases, we remind and recommend facilities to adhere to [CMS regulations and guidance for COVID-19 testing](#)\*\*\*, including routine *unvaccinated* staff testing, testing of individuals with symptoms, and outbreak testing.

When a new case of COVID-19 among residents or staff is identified, a facility should immediately begin outbreak testing *in accordance with* [CMS QSO 20-38-NH REVISED](#) and [CDC guidelines](#).

*While it is safer for visitors not to enter the facility during an outbreak investigation, visitors must still be allowed in the facility. Visitors should be made aware of the potential risk of visiting during an outbreak investigation and adhere to the core principles of infection prevention. If residents or their representative would like to have a visit during an outbreak investigation, they should wear face coverings or masks during visits, regardless of vaccination status, and visits should ideally occur in the resident's room. Facilities may contact their local health authorities for guidance or direction on how to structure their visitation to reduce the risk of COVID-19 transmission during an outbreak investigation.*

### **Communal Activities, Dining *and Resident Outings***

While adhering to the core principles of COVID-19 infection prevention, communal activities and dining may occur. Book clubs, crafts, movies, exercise, and bingo are all activities that can be facilitated with alterations to adhere to the guidelines for preventing transmission. *The safest approach is for everyone, regardless of vaccination status, to wear a face covering or mask while in communal areas of the facility. For more information, see the Implement Source Control section of the CDC guidance [“Interim Infection Prevention and Control Recommendations for Healthcare Personnel During the Coronavirus Disease 2019 \(COVID-19\) Pandemic.](#)*

*Facilities must permit residents to leave the facility if they choose. Should a resident choose to leave, the facility should remind the resident and any individual accompanying the resident to follow all recommended infection prevention practices including wearing a face covering or mask, physical distancing, and hand hygiene and to encourage those around them to do the same.*

*Upon the resident's return, nursing homes should take the following actions:*

- *Screen residents upon return for signs or symptoms of COVID-19.*
  - o *If the resident or family member reports possible close contact to an individual with COVID-19 while outside of the nursing home, test the resident for COVID-19, regardless of vaccination status. Place the resident on quarantine if the resident has not been fully vaccinated.*
  - o *If the resident develops signs or symptoms of COVID-19 after the outing, test the resident for COVID-19 and place the resident on Transmission-Based Precautions, regardless of vaccination status.*
- *An adult care home may also opt to test unvaccinated residents without signs or symptoms if they leave the nursing home frequently or for a prolonged length of time, such as over 24 hours.*
- *Facilities might consider quarantining unvaccinated residents who leave the facility if, based on an assessment of risk, uncertainty exists about their adherence or the adherence of those around them to recommended infection prevention measures.*
- *Monitor residents for signs and symptoms of COVID-19 daily.*

*Residents who leave the facility for 24 hours or longer should generally be managed as a new admission or readmission, as recommended by the CDC's [“Interim Infection Prevention and Control Recommendations to Prevent SARS-CoV-2 Spread in Nursing Homes.](#)” Please note that there are exceptions to quarantine, including for fully vaccinated residents.*

## ***Entry of Healthcare Personnel and Other Providers of Service***

In general, fully vaccinated Healthcare Personnel (HCP) should continue to wear source control while at work. However, fully vaccinated HCP could dine and socialize together in break rooms and conduct in-person meetings without source control or physical distancing. If unvaccinated HCP are present, everyone should wear source control and unvaccinated HCP should physically distance from others.

Recommendation for use of personal protective equipment by HCP remains unchanged and HCP should adhere to the following the [Interim Infection Prevention and Control Recommendations for Healthcare Personnel During the Coronavirus Disease 2019 \(COVID-19\) Pandemic](#) while providing patient care.

If the HCP(s) is not providing patient care (i.e. eating assistance) fully vaccinated residents and HCP could eat their meals together following the communal dining section(s) of both CMS and KDADS visitation guidance.

*All healthcare workers must be permitted to come into the facility as long as they are not subject to a work exclusion or showing signs or symptoms of COVID-19. In addition to health care workers, personnel educating and assisting in resident transitions to the community should be permitted entry consistent with this guidance. We note that EMS personnel do not need to be screened, so they can attend to an emergency without delay. We remind facilities that all staff, including individuals providing services under arrangement as well as volunteers, should adhere to the core principles of COVID-19 infection prevention and must comply with COVID-19 testing requirements.*

### **Visitor Testing and Vaccination**

While not required, we encourage facilities in *counties with substantial* or high *levels of community transmission* to offer testing to visitors, if feasible. If so, facilities should prioritize visitors that visit regularly (e.g., weekly), although any visitor can be tested. *If facilities do not offer testing, they should encourage visitors to be tested on their own before coming to the facility (e.g., within 2–3 days).* Similarly, we encourage visitors to become vaccinated when they have the opportunity. While visitor testing and vaccination can help prevent the spread of COVID-19, visitors should not be required to be tested or vaccinated (or show proof of such) as a condition of visitation. This also applies to representatives of the Office of the State Long-Term Care Ombudsman and protection and advocacy systems, as described below. Visitors shall be given the opportunity to disclose their vaccination status to determine if the visitor may have close contact (including touch) and not wear source control while alone in a resident's room or the designated visitation room, however the facility may not require visitors to disclose their vaccination status or to show proof of vaccination. Visitors that decline to disclose their vaccination status should adhere to the infection control principles of COVID-19 infection prevention for unvaccinated persons.

**NOTE:** Visitors who choose to disclose their vaccination status are not required to show proof of vaccination for status to be valid.

### **Access to the Long-Term Care Ombudsman**

Regulations at 42 CFR § 483.10(f)(4)(i)(C) require that a Medicare and Medicaid-certified nursing home provide representatives of the Office of the State Long-Term Care Ombudsman with immediate access to

any resident. K.A.R. 26-39-102(g)(4) also has this same requirement that all Adult Care Homes must follow. *If an ombudsman is planning to visit a resident who is in TBP or quarantine, or an unvaccinated resident in a nursing home in a county where the level of community transmission is 7 substantial or high in the past 7 days, the resident and ombudsman should be made aware of the potential risk of visiting, and the visit should take place in the resident's room.* Representatives of the Office of the Ombudsman should adhere to the core principles of COVID-19 infection prevention as described above *If the resident or the Ombudsman program requests alternative communication in lieu of an in-person visit*, facilities must, at a minimum, facilitate alternative resident communication with the ombudsman, such as by phone or through use of other technology. Nursing homes are also required under 42 CFR § 483.10(h)(3)(ii) to allow the Ombudsman to examine the resident's medical, social, and administrative records as otherwise authorized by State law as are all Adult Care Homes per K.S.A. 39-1406.

## **Federal Disability Rights Laws and Protection & Advocacy (P&A) Programs**

Section 483.10(f)(4)(i)(E) and (F) requires the facility to allow immediate access to a resident by any representative of the protection and advocacy systems, as designated by the state, and as established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act), and of the agency responsible for the protection and advocacy system for individuals with a mental disorder (established under the Protection and Advocacy for Mentally Ill Individuals Act of 2000). P&A programs authorized under the DD Act protect the rights of individuals with developmental and other disabilities and are authorized to “investigate incidents of abuse and neglect of individuals with developmental disabilities if the incidents are reported to the system or if there is probable cause to believe the incidents occurred.” 42 U.S.C. § 15043(a)(2)(B). Under its federal authorities, representatives of P&A programs are permitted access to all facility residents, which includes “the opportunity to meet and communicate privately with such individuals regularly, both formally and informally, by telephone, mail and in person.” 42 CFR § 51.42(c); 45 CFR § 1326.27.

*If the P&A is planning to visit a resident who is in TBP or quarantine, or an unvaccinated resident in a county where the level of community transmission is substantial or high in the past 7 days, the resident and P&A representative should be made aware of the potential risk of visiting and the visit should take place in the resident's room.*

Additionally, each facility must comply with federal disability rights laws such as Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA). For example, *if communicating with individuals who are deaf or hard of hearing, it is recommended to use a clear mask or mask with a clear panel. Face coverings should not be placed on anyone who has trouble breathing or is unable to wear a mask due to a disability, or anyone who is unconscious, incapacitated, or otherwise unable to remove the mask without assistance*

We believe the guidance above represents reasonable ways an adult care home can facilitate in-person visitation. Except for on-going use of virtual visits, facilities may still restrict visitation due to the COVID-19 county positivity rate, the facility's COVID-19 status, a resident's COVID-19 status, visitor symptoms, lack of adherence to proper infection control practices, or other relevant factor related to the COVID-19 Public Health Emergency (PHE.) However, facilities may not restrict visitation without a reasonable clinical or safety cause, consistent with 26-39-103(m)\*\*\*. Failure to facilitate visitation, without adequate reason related to clinical necessity or resident safety, would constitute a potential violation of 26-39-103(m) and the facility would be subject to citation and enforcement actions.

Residents who are on transmission-based precautions for COVID-19 should only receive visits that are virtual, through windows, or in-person for compassionate care situations, with adherence to transmission-based precautions. However, this restriction should be lifted once transmission-based precautions are no

longer required per CDC guidelines, and other visits may be conducted as described above.

If facilities have questions regarding the KDADS visitation guidance, contact [KDADS.reopening@ks.gov](mailto:KDADS.reopening@ks.gov).

*\*Fully vaccinated* refers to a person who is  $\geq 2$  weeks following receipt of the second dose in a 2-dose series, or  $\geq 2$  weeks following receipt of one dose of a single-dose vaccine, per the [CDC's Public Health Recommendations for Vaccinated Persons](#).

*\*Unvaccinated* refers to a person who does not fit the definition of "fully vaccinated," including people whose vaccination status is not known, for the purposes of this guidance.

\*\*Facilities should use their community transmission level as the trigger for staff testing frequency. Reports of COVID-19 level of community transmission are available on the CDC COVID-19 Integrated County View site: <https://covid.cdc.gov/covid-data-tracker/#county-view>. Please see the COVID-19 Testing section on the CMS COVID-19 Nursing Home Data webpage: <https://data.cms.gov/covid-19/covid-19-nursing-home-data> for information on how to obtain current and historic levels of community transmission on the CDC website. Table 2: Routine Testing Intervals by County COVID-19 Level of Community Transmission. Please note that Federally Certified Nursing facilities are also still subject to [QSO Memo 20-39-NH](#).

\*\*\*Federally Certified Nursing facilities are also subject to compliance of 42 CFR 483.10(f)(4) and 42 CFR 483.80(h).